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"RESPONSE UNDER 37 CFR 1.116-
EXPEDITED PROCEDURE EXAMINING
GROUP 3726"

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

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McCLELLAND
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NEUSTADT
P.C.

Re: U.S. Application
Serial No: 09/402,472
CPA Filed: June 15, 2001
Group: 3726
Inventor: Daniel CELERIER, et al.
For: INTERNAL COMBUSTION
ENGINE EXHAUST DEVICE
AND METHOD FOR
MAKING SAME

SIR:

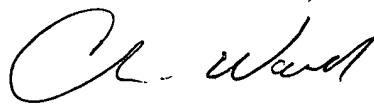
Attached hereto for filing are the following papers:

REQUEST FOR RECONSIDERATION (After Final)

Our check in the amount of \$0.00 is attached covering any required fees. In the event that any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 CFR 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is attached.

Respectfully submitted,

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF : :

Daniel CELERIER, et al. : EXAMINER: JIMENEZ, M.

SERIAL NO.: 09/402,472 : :

CPA FILED: June 15, 2001 : GROUP ART UNIT: 3726

FOR: INTERNAL COMBUSTION :
ENGINE EXHAUST DEVICE
AND METHOD FOR MAKING
SAME

REQUEST FOR RECONSIDERATION (AFTER FINAL)

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

In response to the Official Action dated February 1, 2002, the Applicants respectfully request favorable reconsideration of the above-identified application in light of the following discussion.

Claims 8-11, 13-16, and 18-19 are presently active in this case.

Claims 8, 13, 14, 16, 18, and 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Reed (U.S. Patent No. 4,526,672) in view of Fogle et al. (U.S. Patent No. 2,991,551) and Olson (U.S. Patent No. 5,984,138). Claim 8 was rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Feher (U.S. Patent No. 3,429,171).

Claims 9-11 and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Fogle et al. and Olson and further in view of page 2, line 4, of the present application.

Claims 9-11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Feher and further in view of page 2, line 4, of the present application. Claims 13, 14, 16, 18, and 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of

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Feher and Olson. Claim 15 was rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Feher and Olson, and further in view of page 2, line 4, of the present application.

The Reed reference describes an oxygen sensor including a sensor element (12) mounted within a planar annular surface (14). A housing (28) is mounted within the planar annular surface (14) and the sensor element (12) is provided within the housing (28). The lower end of the housing (28) is provided with inwardly turned lips (42) which secure a gas deflector (44). The gas deflector (44) includes shaped apertures (46) to admit the exhaust gases about an exterior surface (16) of the sensor element (12).

As noted in the outstanding Official Action, the Reed reference does not disclose a bush having an interior portion and an exterior portion, where the interior portion extends further within an interior of the pipe element than the exterior portion extends beyond an exterior of the pipe element, as recited in Claims 8 and 13. In fact, the Reed reference describes and depicts an oxygen sensor that is mounted within a planar surface (14). The Official Action cites the Fogle et al. and Olson references, and, alternatively, the Feher reference for the teaching of a pipe element having exterior and interior portions as recited. The Applicants respectfully submit that the combination of references set forth in the Official Action with respect to the pending claims is improper since the combined references teach away from each other.

The Fogle et al. reference is cited for the teaching of a bush having interior and exterior portions. However, the Fogle et al. reference does not disclose an interior portion extending further than an exterior portion. The Olson reference is further cited for such a teaching. The Olson reference describes tanks with bushings formed by flowdrilling holes in the tanks. The bushings have smooth bores which receive push-to-connect couplings. The

bushing (42) includes a bore (44) defined by a cylindrical surface (46), and an exterior rim (48). However, the Applicants respectfully submit that the Olson reference should not be combined with the Reed reference because the cylindrical surface (46) that extends within the tank taught in the Olson reference would adversely affect the operation of the sensor described in the Reed reference. Specifically, the cylindrical surface (46) of the Olson reference would partially or completely cover the apertures (46) in the sensor of the Reed reference, thereby restricting to flow of gas to be measured to the sensor element (12).

The Applicants, therefore, respectfully submit that the rejection is based on the improper application of hindsight considerations. It is well settled that it is impermissible simply to engage in hindsight reconstruction of the claimed invention, using Applicants' structure as a template and selecting elements from the references to fill in the gaps. *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). Recognizing, after the fact, that a modification of the prior art would provide an improvement or advantage, without suggestion thereof by the prior art, rather than dictating a conclusion of obviousness, is an indication of improper application of hindsight considerations. Simplicity and hindsight are not proper criteria for resolving obviousness. *In re Warner*, 397 F.2d 1011, 154 USPQ 173 (CCPA 1967).

Accordingly, the Applicant respectfully requests the withdrawal of the obviousness rejections of Claims 8 and 13 based upon the combination of the Reed, Fogle et al., and Olson references.

The Reed reference is also combined with the Feher reference to reject Claim 8, and with the Feher and Olson references to reject Claim 13. As noted above and in the outstanding Official Action, the Reed reference does not disclose a bush having an interior portion and an exterior portion, where the interior portion extends further within an interior of

the pipe element than the exterior portion extends beyond an exterior of the pipe element, as recited in Claims 8 and 13. As further noted above, the Applicants respectfully submit that the Olson reference should not be combined with the Reed reference because the cylindrical surface (46) that extends within the tank taught in the Olson reference would adversely affect the operation of the sensor described in the Reed reference. Specifically, the cylindrical surface (46) of the Olson reference would partially or completely cover the apertures (46) in the sensor of the Reed reference, thereby restricting to flow of gas to be measured to the sensor element (12).

The Feher reference describes a sheet metal piecing and extruding member. The Feher reference describes forming holes in flat portions of soft sheet metal. The holes is formed by using a backing member (16) having suitable apertures and a drill (10) positioned above a section (14) of sheet metal. The Feher reference does not describe a method of drilling holes in pipes, but rather describes forming holes in flat sheet metal. In fact, using a backing member (16) to form holes in a pipe would likely prove to be difficult in that the extended portion (40) would extend within the aperture of the backing member (16)(presumably positioned within the interior of the pipe), which would prevent the backing member (16) from being removed from the pipe following the formation of the hole. Additionally, as with the Olson reference, the Applicants further submit that the Feher reference should not be combined with the Reed reference because the extended portion (40) that extends from the sheet (14) in the Feher reference would adversely affect the operation of the sensor described in the Reed reference. Specifically, the extended portion (40) of the Feher reference would partially or completely cover the apertures (46) in the sensor of the Reed reference, thereby restricting to flow of gas to be measured to the sensor element (12).

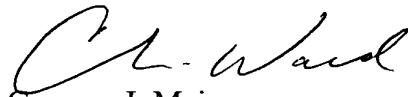
The Applicants, therefore, respectfully submit that the rejection is based on the improper application of hindsight considerations. Accordingly, the Applicant respectfully requests the withdrawal of the obviousness rejection of Claim 8 based upon the combination of the Reed and Feher references, and the obviousness rejection of Claim 13 based upon the combination of the Reed, Feher, and Olson references.

Claims 9-11, 14-16, and 18-19 are considered allowable for the reasons advanced for Claims 8 and 13 from which they depend. These claims are further considered allowable as they recite other features of the invention that are neither disclosed, taught, nor suggested by the applied references when those features are considered within the context of Claims 8 and 13.

Consequently, in view of the above discussion, it is respectfully submitted that Claims 8-11, 13-16, and 18-19 are patentably distinguishing over the cited art. The present application is therefore believed to be in condition for formal allowance and an early and favorable reconsideration of this application is therefore requested.

Respectfully submitted,

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